

## § 17.6

(i) Whether payment resulted from the individual's incorrect (not necessarily fraudulent) statement.

(ii) Whether he or she knew the payment was erroneous and, if so, whether his or her subsequent failure to act resulted from desire or ignorance.

(iii) Whether he or she failed to disclose material facts in his or her possession.

(iv) Whether he or she could have determined that the payment was erroneous.

(c) *Equity and good conscience.* (1) "Equity and good conscience" as defined in equity and the commonly understood meaning thereof shall be attached to waiver determinations. In addition, the decision must be made whether the exercise of waiver of overpayment would be in opposition to the basic purpose of title VII of the Foreign Service Act (22 U.S.C. 1061, *et seq.*) and would injure the administration of such title.

(2) The following guides will also be applied, as appropriate:

(i) Waiver of overpayment may be granted when an individual by reason of receipt of the overpayment has: (a) Relinquished a valuable right; or (b) changed his or her position for the worse.

(ii) Waiver of overpayment may be granted when the individual has consistently acted in good faith regarding the overpayment.

(iii) Waiver of overpayment cannot be granted when the individual has been found to be at fault or if the overpayment has been obtained by fraud.

## § 17.6 Notice of decision and right of appeal.

If the annuitant, without good cause shown, fails or refuses to produce the requested additional information or authorization, the Department of State is entitled to make adverse inferences with respect to the matters sought to be amplified, clarified, or verified.

(a) The final administrative decision shall be reduced to writing and the Director shall send it expeditiously to the annuitant.

(b) If the decision is adverse to the annuitant, the notification of the decision shall include a written description of the annuitant's rights of appeal to

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the Foreign Service Grievance Board, including time to file, where to file, and applicable procedure.

## § 17.7 Appeal.

The Foreign Service Grievance Board shall entertain any appeal under this part in accordance with the regulations of the Board set forth in 22 CFR part 16. The Director of the Office of Finance, with such assistance as may be necessary, shall represent the Department in proceedings before the Board. The decision of the Board is final.

## PART 18—REGULATIONS CONCERNING POST EMPLOYMENT CONFLICT OF INTEREST

### Subpart A—General Provisions

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18.1 Scope.

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### Subpart B—Applicable Rules

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18.10 Service of complaint and other papers.

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18.15 Hearings.

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18.17 Depositions.

18.18 Proposed findings and conclusions.

18.19 Decision of the hearing examiner.

18.20 Appeal to the Board of Appellate Review.

18.21 Decision of the Board of Appellate Review.

18.22 Notice of disciplinary action.

AUTHORITY: 18 U.S.C. 207, as amended, 92 Stat. 1864.

SOURCE: 46 FR 2608, Jan. 12, 1981, unless otherwise noted.